FILED
SEP 14 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

No. 353

Petition for Writ of Certiorari to the Supreme Court of the State of Wisconsin and supporting Brief

A. W. RICHTER,
Attorney for Petitioners.

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

INDEX

	Page
Petition for writ of certiorari	1-9
Summary statement of matters involved	2-7
Questions presented	8
Reasons relied upon for allowance of writ	8
Brief in support of petition	10-31
I. Jurisdiction	10
II. Statement of the case	11
III. Opinion below	12
Errors to be assigned	14
Argument	15
Petitioner union is exclusive bargaining representative under National Labor Relations Act established without unfair labor practices of employer	15
The basis of Wisconsin Peace Act is creation of a series of unfair labor practices of employees and labor organizations	16
It has added to the rights guaranteed by Section 7 of the National Labor Relations Act, the so-called right to refrain from all collective activities	17
It seeks to reestablish individual bargaining between employer and employee contrary to the policy of the National Labor Relations Act	18
The discharge of the individual respondents, demanded by the union as a part of the campaign for a closed shop, was held an unfair labor practice under the provision of the Wisconsin Act requiring three-fourths majority for a closed shop	20
This provision is contrary to National Labor Relations Act	21

Page

It deprives employees of an essential right given by the National Act 22

The findings are couched in language of force not applicable to the real facts 23

The activities which are enjoined are concerted activities protected by Section 7 N.L.R.A..... 24

Similar activities have been held to be concerted action under Section 7 N.L.R.A. by N.L.R.B..... 25

Under the interpretation of the Wisconsin Supreme Court there is a forfeiture of rights guaranteed by N.L.R.A. as defined by this Court..... 26

The reasoning of the Wisconsin Supreme Court that there is no conflict between the State and National Acts is unsound 27

The Wisconsin Act, as interpreted, is contrary to the public policy of N.L.R.A. 28

The Federal Constitutional Right of free speech is infringed by the judgment 29

The judgment renders the provisions of the Wisconsin Act involved unconstitutional 30

Section of Wisconsin Peace Act here involved..... 31

CASES CITED

A.F.L. vs. Swing, 312 U.S. 321, 61 Sup. Ct. 568.....9, 30

Allen-Bradley Local vs. Wis. E.R.B., 315 U.S. 740, 62 Sup. Ct. 820 .....9, 11, 12, 26

American Foundries vs. Tri-City Council, 257 U.S. 184, 205, 207 24

Armour & Co., 25 N.L.R.B., 105, 6 L.R.R.M. 526.... 26

Page

Associated Press vs. Labor Board, 301 U.S. 58..... 28

Berkshire Knitting Mills, 17 N.L.R.B., 259, 5 L.R. R.M. 305, 313 26

Carpenters Union vs. Ritter, 315 U.S. 722, 62 Sup. Ct. 807 14

Cudahy Packing Co., 29 N.L.R.B. No. 133, 8 L.R. R.M. 10 26

Firestone & Rubber Co., 22 N.L.R.B., 57, 6 L.R. R.M. 223, 226 25

Harnischfeger Corp., 9 N.L.R.B. 676, 3 L.R.R.M. 316 25

Hotel Employees vs. W.E.R.B., 236 Wis. 329, 342, 353, 294 N.W. 632 21

Hotel Restaurant Employees Local 122 vs. W.E. R.B., 315 U.S. 437, 62 Sup. Ct. 706..... 12

International Association of Machinists vs. N.L. R.B., 311 U.S. 72, 81, 85 L. Ed. 50, 61 Sup. C. 83.... 16

Labor Board vs. Fruehauf, 301 U.S. 49..... 28

Milk Wagon Drivers Union, etc. vs. Meadowmoor Dairies, 312 U.S. 287, 85 L. Ed. 836, 61 S. Ct. 552 .....9, 18, 29

N.L.R.B. vs. Electric Vacuum Cleaner Co., 315 U.S. 685, 694, 86 L. Ed. 795, 62 Sup. C. 846..... 16

N.L.R.B. vs. Jones & Laughlin S. Corp., (1937) 301 U.S. 1, 57 St. Ct. 615, 81 L. Ed. 983, 108, A.L.R. 1352 .....8, 28

N.L.R.B. vs. Stackpole Carbon Co., 105 F. (2d) 167, 174, 176 cert. den. 308 U.S. 605..... 26

Republic Steel Corp. vs. N.L.R.B., 107 F. (2d) 472, 479 cert. den. 309 U.S. 684 26

Page

Thornhill vs. Ala., 310 U.S. 88, 84 L. Ed. 1093, 60 Sup. Ct. 736 ..... 9, 11, 13, 24, 29

Traux vs. Corrigan, 257 U.S. 312, 340, 42 Sup. Ct. 124, 132, 66 L. Ed. 254 24

United Air Craft Mfg. Co., 1 N.L.R.B. 236, 248, 1 L.R.R.M., 87 25

Washougal Woolen Mills, 3 N.L.R.B. 18, 6 L.R.R.M. 279 25

STATUTES

FEDERAL

Judicial Code, Section 237-b 10

National Labor Relations Act, 49 Stats. 452, Section 1 and 7, 29 U.S.C. 151, 157 ..... 8, 17, 30

Section 7, N.L.R.A. 10

28 U.S.C. 344-b 10

29 U.S.C. 151 27

Section 10, N.L.R.A. 27

Section 10(a) N.L.R.A. 12

WISCONSIN

Section 111.02(1) 9, 16, 31

Section 111.04 ..... 9, 11, 14, 17, 21, 31, 32

Section 111.06 ..... 23, 31

Section 111.06(1)(c) 14

Section 111.06(2)(a)(b) 9, 11

Section 111.06(2)(a)(b)(e)(f) 2

Section 111.06(2)(b) 21

Section 111.06(2)(e) 20

Section 111.06(2)(a) to (j) 16

Section 111.06(2)(e) 20

Section 111.06(3) 9, 16

Section 111.06(c) 9, 20

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

No.

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of Wisconsin

To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Harold Christoffel and Allis-Chalmers Workers Union, Local 248, United Automobile Workers of America, Congress of Industrial Organizations, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin affirming a judgment of the Circuit Court of Milwaukee County, which had affirmed with some modifications an enforcement order and findings of the Wisconsin Employment Relations Board.

SUMMARY STATEMENT OF MATTERS INVOLVED

The proceeding was commenced before the Wisconsin Employment Relations Board by the filing of a complaint by respondents, Nicholas Imp and Michael Bohachef, charging petitioners with unfair labor practices under Section 111.06(2)(a)(b)(e)(f), Statutes of Wisconsin (Printed at the end hereof). A hearing was held by the Board which related in large part to the charge of the complainants that the strike vote of appellant union was illegal. The Board found this charge not to be established (R. 133, No. 15) and, therefore, the complaint as to subdivisions (e) and (f)(2) of Section 111.06 Wisconsin Statutes fell out of the case.

The board made detailed findings with reference to the charges under Section 111.06(2)(a) and (b) (R. 125).

It is undisputed that Local 248 had been since January, 1938 and was at the time of the proceeding the exclusive collective bargaining representative of all the production workers (with a few exceptions) of the Allis-Chalmers Manufacturing Company at its plant at West Allis, Wisconsin by virtue of action of National Labor Relations Board; that Allis-Chalmers Manufacturing Company is engaged in interstate commerce; that respondents, Imp and Bohachef, are production workers at the Allis-Chalmers plant and were formerly members of Local 248. The evidence is in dispute as to whether they were still members at the time of the occurrences found by the Board. They had discontinued paying dues in May, 1939. Members and officers of the union tried by continued and persistent argument and persuasion to induce them to pay up their dues by signing notes for the delinquent dues and continuing current payments. It is in connection with these efforts of the union and its mem-

bers to induce the individual respondents to restore themselves to good standing in the union that the matters which are the subject of most of the findings of the Board occurred.

Imp and Bohachef persistently refused to avail themselves of the offers to restore their good standing in the union and, it is claimed, developed hatred for the union and its officers and became disrupters.

On December 18, 1940 an incident took place which the union members involved claim to have been an attempt by Imp and Bohachef to run down and injure one of their members and which Imp and Bohachef claim was an attempt to assault them or intimidate them (R. 129, No. 9). A disorderly conduct charge against some of the union men who participated in the incident was dismissed by the police court of West Allis (R. 192).

After this incident the union demanded the discharge of Imp and Bohachef.

On January 22, 1941 the union called a strike against the Allis-Chalmers Manufacturing Company and made the discharge of Imp and Bohachef one of its strike demands. The strike was settled pursuant to an agreement arrived at between the company, the union and the National Defense Mediation Board (R. 105, Exhibit A).

Respondent Board made findings (R. 125) to the effect that it had been and was the policy of petitioners to compel all employees within the collective bargaining unit to become and remain in good standing (R. 127, No. 6); that to carry out such policy and to coerce and intimidate employees of Allis-Chalmers Company to cooperate with petitioners against their will, petitioners carried on a course of coercion and intimidation of respondents, Imp and Bohachef, to compel them to join the union and pay dues as the condition of retaining their employment; that

since September, 1940, union officers and members contacted Bohachef almost daily to have him pay his back dues and penalties to the union and to be reinstated in good standing and at many such contacts he was threatened by officers and members of the union with loss of his job and bodily injury if he failed to comply with their demands; that on one occasion a group of officers and members, in an attempt to intimidate Bohachef to become reinstated as a union member, prevented him from leaving the plant until 1:30 in the morning by ganging up around the gates and placing him in fear of bodily injury; that on December 18, 1940, a group of members, under the direction of certain officers, guarded each of the employee exit gates at the plant for the purpose of contacting Bohachef and compelling him by fear of bodily harm and loss of his job to rejoin the union, that when Bohachef quit work at 12:40 A.M., he zig zagged through the plant to avoid the union officers and members and finally met respondent, Imp, and with him left the plant at 1:00 A.M., outside of the gate they were met by a group of members and were followed by them to Imp's car, they entered the car and locked the doors, the union members attempted to open the doors, cursed at them and attempted to prevent them moving the car by one of them standing in front of it, Imp started the car slowly and the union member in front of it climbed on the bumper, Imp proceeded slowly until he was stopped by the car of the union member being driven in front of him, at which time the union member jumped off the car, which immediately turned around and proceeded directly to the police station followed by a car containing members of a union group, stones were thrown which shattered the rear window and scattered glass inside the car, as a result of said incident, petitioners verbally and in writing demanded the discharge of Imp and Bohachef on the ground that they were disrupters;

that it has long been the claim of petitioners that every employee who is not a member of good standing in the union is a disrupter subject to discharge at the request of the union, within the terms of the letter of the Allis-Chalmers Company (R. 126, No. 5); that Imp and Bohachef engaged in no labor union activity and did not attempt to undermine the activities of petitioners but that Bohachef, when threatened and intimidated on the company premises, forcefully expressed his reasons for not affiliating under present leadership of the union; that petitioners attempted to coerce and intimidate Imp and Bohachef by falsely and unreasonably charging them with a criminal offense in attempting to kill or to do great bodily harm to the union member who stood on the bumper of Imp's car during the incident above described; that they attempted to cause the Governor of Wisconsin to remove the District Attorney and appoint a successor who would prosecute Imp and Bohachef; that all of the activities directed at Imp and Bohachef were a part of a plan to compel all employees in the collective bargaining unit for which such union was exclusive bargaining representative to become and remain members of the union.

The Board made conclusions of law (R. 133): that petitioner union was guilty of unfair labor practices: 1. By threatening Bohachef with bodily harm, and Imp and Bohachef with the loss of their jobs, by assaulting them while in their automobile, by falsely accusing them of criminal offenses in order to coerce and intimidate them in the enjoyment of their legal right to select bargaining representatives or to refrain from any or all concerted activities for collective bargaining; 2. by attempting to induce the employer to interfere with Imp and Bohachef by discharge or discipline and thus to interfere with their right to select bargaining representatives free from any interference.

The Board ordered petitioners to cease and desist: A. From attempting to coerce or intimidate Imp and Bohachef or any of the employees of the Allis-Chalmers Co. in the enjoyment of the legal rights to select bargaining representatives to form, join or assist labor organizations or to engage lawful concerted activities for collective bargaining or to refrain from such activity by threatening Imp and Bohachef or any of the employees at the Allis-Chalmers Co. with bodily harm or loss of their jobs, by assaulting them, by falsely accusing them of criminal offenses, by continuous solicitation of membership or by any other manner or in any other way. B. Attempting to coerce, intimidate or induce Allis-Chalmers Manufacturing Company to interfere with Imp and Bohachef in their legal right of self organization to bargain collectively and to engage in lawful concerted activities for collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities. And the Board ordered affirmative action: Post notices that no employee is required by law or any collective bargaining agreement to become or remain a member of petitioner union in order to retain his employment, that employees of the company are guaranteed by law the right to choose such bargaining representatives as they see fit and are guaranteed the right to refrain from any collective bargaining activities; that petitioner union will refrain from attempting to interfere with the right of the individual employees of the company, will not coerce or intimidate by threat or bodily harm, loss of his job or in any other manner in order to compel such employees against their will to join or assist petitioner union and will refrain from attempting to coerce, intimidate or induce Allis-Chalmers Manufacturing Company to interfere with any of its employees to associate with a labor organization or to refrain from such association and will not demand the discharge of employees for failing to join or to maintain membership in such union or engaging in union ac-

tivity off the premises of the employer or for joining or assisting any other labor organization.

The trial court sustained, confirmed and ordered enforced the order of respondent Board (R. 137) and modified it to the effect (1) that appellants cease and desist from: A. Attempting to coerce or intimidate any of the employees of the Allis-Chalmers Company either by continuous solicitation if objected to, or by assaults or threats of bodily harm or loss of their job, or by false accusations of criminal offenses or by any other manner or in any other way (R. 138) B. Attempting to coerce, intimidate or induce Allis-Chalmers Company to interfere with plaintiffs in the enjoyment or exercise of their rights and activities or to refrain from such activities. (2) Take affirmative action as follows: A. Post notices that no employee is required by law or by any collective bargaining agreement to become or remain or not to become or remain a member of petitioner union or any other organization in order to retain employment, that petitioner union will refrain from interfering with the rights of individual employees and will not coerce or intimidate any employees of the company by threat of bodily harm, loss of his job, or in any other manner in order to compel them against their will to join or assist petitioner union; and that petitioner union will refrain from attempting to coerce, intimidate or induce the company to interfere with any of its employees in their legal right to associate with labor organizations or refrain from such organization and will not demand the discharge of employees for failing to join or maintain membership in petitioner union or engaging in any union activity off the premises of the company or for joining and assisting any labor organization (R. 138). The judgment is in the same terms (R. 140 et seq.)

The Supreme Court of Wisconsin affirmed the judgment without modification (Opinion end of record).

QUESTIONS PRESENTED

The case presents the question whether a state may by a labor relations act create a right to abstain from all the concerted activities provided for in the National Labor Relations Act and by the interpretation of this right prevent the exercise of the rights guaranteed in Section 7 of the National Act.

The case also presents the question whether a state may, by means of an onerous provision in its statute, prevent the efforts of a labor organization, which was established as the sole bargaining representative for all the production workers (with a few exceptions) by the National Labor Relations Board of an employer admittedly engaged in an interstate commerce, to obtain a closed shop by demanding the discharge of those employees who refuse to join the union where such provision in the state law is contrary to the provisions to the National Labor Relations Act.

The case also presents the question whether a state may prevent solicitation of membership by members of a labor organization because such solicitation infringes upon the right established by the State Act of refraining from all collective labor activities.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The Supreme Court of the State of Wisconsin has decided a federal question in a way in conflict with an applicable federal statute and with the applicable decisions of this Court:

National Labor Relations Act, 49 Stats. 452, Sections 1 and 7, 29 U. S. C. 151, 157.

National Labor Relations Board vs. Jones & Laughlin S. Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A.L.R. 1352.

Thornhill vs. Ala., 310 U. S. 88, 84 L. Ed. 1093, 60 Sup. Ct. 736.

Milk Wagon Drivers Union, etc. vs. Meadowmoor Dairies, 312 U. S. 287, 85 L. Ed. 836, 61 Sup. Ct. 552.

A. F. L. vs. Swing, 312 U. S. 321.

Allen-Bradley Local vs. Wis. E. R. B., 315 U. S. 740, 62 Sup. Ct. 820.

Wisconsin Statutes 1941
Section 111.02(1)
Section 111.04
Section 111.06(c)
Section 111.06(2)(a)(b)
Section 111.06(3)

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of, and under the seal of, this Honorable Court directed to the Supreme Court of the State of Wisconsin commanding that Court to certify and send to this Court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, and that the judgment of the said Supreme Court of the State of Wisconsin may be reversed by this Honorable Court, or the case ordered dismissed, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper, and your petitioners will ever pray.

Harold Christoffel and
Allis-Chalmers Workers Union, Local 248,
United Automobile Workers of America, C.I.O.
Petitioners.

A. W. RICHTER,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

JURISDICTION

The jurisdiction of this Court is invoked under Judicial Code, Section 237-b, as amended by the Act of February 13, 1925, and March 8, 1934, 28 U. S. C. 344-b.

The date of the final judgment is June 16, 1943, on which date the Supreme Court of Wisconsin affirmed the judgment against petitioners. No application for rehearing was made.

The nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237-b, supra. The claims of federal constitutional right were specifically raised and set up at the commencement of the hearing before the Board by motion to dismiss (R. 145) and in the trial court by the petition for review (R. 104). The Board overruled the motion and the trial court denied such claim of federal constitutional right and by its final judgment rendered judgment against said claims (R. 140). The Supreme Court of the State of Wisconsin in its opinion specifically affirmed said denial of petitioners' claimed constitutional rights, and specifically passed adversely upon petitioners' claimed constitutional right, and overruled the same (R. Opinion 4, 20 et seq.).

The federal rights claimed by petitioners are that the Wisconsin Labor Peace Act as interpreted by the Wisconsin Supreme Court, is unconstitutional, as applied to them, in denying them the rights guaranteed by Section 7 of the National Labor Relations Act in preventing them from carrying on their concerted activities to in-

crease the membership in their organization and to make it a more effective bargaining representative of all the production workers whom they represent by virtue of the order of the National Labor Relations Board, and, in preventing them from carrying on their efforts to obtain a closed shop from the employer. Such denials are based upon the interpretation of the Wisconsin Statute, Section 111.06(2)(a)(b), to the effect that they prevent persuasion if objected to and also prevent the demand by a labor organization of the discharge of employees refusing to join the organization. The second claim of denial of federal right is based upon the interpretation by the Supreme Court of Wisconsin of Section 111.04, Statutes of Wisconsin to the effect that the right to refrain from organizational activities created by that section prevents peaceful persuasion if objected to.

The following cases, among others, sustain the jurisdiction of this Court:

Allen-Bradley Local vs. Wis. E. R. B., 315 U. S. 740, 62 Sup. Ct. 820.

Thornhill vs. Ala., 310 U. S. 88, 84 L. Ed. 1093, 60 Sup. Ct. 736.

II.

STATEMENT OF THE CASE

As appears from the petition, supra, petitioners were ordered by the Wisconsin Employment Relations Board to cease and desist from attempting to coerce or intimidate the individual respondents or any of the employees of the Allis-Chalmers Manufacturing Company in the enjoyment of their legal right to select bargaining representatives of their own choosing or to engage in lawful concerted activities or to refrain from such activities by, among other things a continuous solicitation of member-

ship or by any other manner or in any other way and from attempting to induce the Allis-Chalmers Manufacturing Company to interfere with individual respondents in their legal right of collective bargaining or the right to refrain from such activities and were ordered to post notices that they would not attempt to induce the Allis-Chalmers Manufacturing Company to discharge employees failing to join or to maintain membership in the union. This decision and order was affirmed by the trial court (R. 137) and by the Supreme Court of Wisconsin (Opinion end of record). 243 Wis. 33 10 N.W. 2d 197

III.
OPINION BELOW

The opinion of the Supreme Court of Wisconsin holds that the jurisdiction of the Wisconsin Board is sustained by

Hotel and Restaurant Employees, Local 122 vs. W.E.R.B., 315 U. S. 437 and

Allen Bradley, Local vs. W.E.R.B, 315 U. S. 740,

and the limitation of the National Act in Section 10(a) to interstate commerce, and, decides that the orders of the board in no way affected interstate commerce. It holds further that there is no such thing under the National Act as an unfair labor practice by employees, nor a guarantee of the right to refrain from joining or assisting a labor organization and that, hence, the National Board had had no jurisdiction and the State Board did have jurisdiction, and, that there is no conflict between the National Act and the State Act because the State Act adds the right to refrain from such activities to the rights set out in 7 of the National Act, and that silence of the National Act on the right of employees to refrain from joining or assisting labor organizations creates no conflict.

It holds further that the findings of the Board are sustained by the evidence, that, it was the policy of Local 248 to compel all employees to become members of it, and, that to carry out this policy, it carried on a course of coercion and intimidation against respondents, Imp and Bohachef, to compel them to join the union as a condition of retaining their employment and threatened Bohachef with loss of his job, and, that on one occasion a group of union members and officers guarded the exit gates of the plant to compel him by fear of bodily injury and loss of his job to rejoin the union and tried to open the locked door of Imp's car containing Imp and Bohachef and that stones were thrown breaking the rear window of the car and denting its body and thereupon the union demanded the discharge of Imp and Bohachef as disrupters; that, the judgment requires the union to cease and desist from (1) continuously soliciting employees over objection to join the union (3) threatening them with loss of their jobs, and, that, while no case has held (1) an unfair labor practice, it harassed and hindered him in his right not to join the union and that such solicitation tends to provoke breaches of the peace and frustrates the declared purpose of the act to promote industrial peace; that the ban of the judgment against seeking to have the employer discharge Imp and Bohachef is correct because *under the act* an employer may not discharge an employee in the absence of a closed shop contract for refusal to join a union; that, the general ban of coercion and intimidation "by any other manner or in any other way" is not too broad since peaceful persuasion is not banned; that this case involves violence, injury to property and threats thereof and this takes it out of the rule of

Thornhill vs. Ala., 310 U. S. 88,

that when concerted activity is for an *unlawful* purpose the free speech provision affords no protection and

Carpenters Union vs. Ritter, 315 U. S. 722,

inferentially so holds.

ERRORS TO BE ASSIGNED

The Supreme Court of Wisconsin Erred:

1. In holding that the right to refrain from collective activities, set forth in Section 111.04, Wisconsin Statutes, is effective to limit the rights guaranteed by Section 7 of the National Labor Relations Act (29 U.S.C. 157).

2. In holding that the provision of Section 111.06(1)(c), Wisconsin Statutes, providing that an all union agreement is not effective unless entered into after a secret ballot conducted by the State Labor Board at which three quarters or more of the employees in the collective bargaining unit have voted affirmatively, is effective to render efforts of a labor organization, which has been established by the National Labor Relations Board as the sole bargaining representative of all the employees in the unit after majority vote in an industry engaged in interstate commerce, to prevent efforts to obtain an all union agreement or closed shop and to render such efforts unfair labor practices under the state law in spite of the provision of the National Labor Relations Act requiring only a majority of the employees to make an all union agreement legal.

3. In holding that solicitation and persuasion by a labor organization could be prohibited, if objected to by those solicited, upon the ground that the object of the solicitation constituted an unfair labor practice under a state law where such object was legal under the National Labor Relations Act.

4. In holding that free speech was not denied by the judgment in this case.

5. In holding that trivial incidents were effective to justify the denial of free speech contrary to the Constitution of the United States.

6. In holding that the acts in question in this case, which were denominated unfair labor practices under the state law, had no relation to interstate commerce.

7. In holding that a labor organization established as the sole bargaining agent under the National Labor Relations Act, and, not created or aided by unfair labor practices of the employer, may be prohibited from demanding, in the course of a campaign for a closed shop, the discharge of employees refusing to join or maintain their membership in such labor organization because such demand is an interference with the right, established by the state law, to refrain from collective activities.

ARGUMENT

The Wisconsin Peace Act Aims at Restoration of Individual Bargaining and is Opposed in Principle to N. L. R. A.

Local 248, petitioner union, is the exclusive bargaining agent of all production workers (with a few exceptions) employed by the Allis-Chalmers Manufacturing Company at its West Allis, Wisconsin Plant, under the National Labor Relations Act and was established as such by the National Labor Relations Board after the democratic process of a majority vote. Respondent Board made a finding that it was such exclusive bargaining representative (R. 125, Finding 2) and the Supreme Court of Wisconsin likewise stated this to be the fact (R. Opinion Wis. Supreme Court 2).

There is no contention that petitioner union came into existence through, or was at any time aided by, unfair

labor practices of the employer; nor that the majority, which established it as the exclusive bargaining representative, was obtained with the aid of unfair labor practices of the employer. Hence, the rule of

> *National Labor Relations Board vs. Electric Vacuum Cleaner Co.,* 315 U. S. 685, 694, 86 L. Ed. 795, 62 Sup. C. 846,
>
> *International Association of Machinists vs. National Labor Relations Board,* 311 U. S. 72, 81, 85 L. Ed. 50, 61 Sup. C. 83,

is not involved. We have to do with a labor organization which has been created the representative of all the employees in the unit under the national law without legal grounds for questioning its status by this Court.

The whole raison d'être of the Wisconsin Peace Act, the law under which this proceeding was brought and decided, and its basic theory is to create a series of what are called "unfair labor practices" *of employees* and (by the definition of persons in the law, 111.02(1) Wisconsin Statutes) of labor organizations, which so-called unfair labor practices are similar to the unfair labor practices of the employer under National Labor Relations Act, (111.06(2)(a) to (j) and 111.06(3) set out at the end of this brief).

The basis of the National Labor Relations Act is the guarantee and protection of the rights of employees against the acts of the employer so as to equalize the otherwise unfair economic position of the individual employee as against the employer. It was sought to guarantee to workingmen the right to organization and collective bargaining by representatives of their own choosing and to guarantee the other necessary supplemental rights of concerted activity to carry out the principal purpose of vesting workingmen with the power to deal with their em-

ployer through labor unions. This is the now famous Section 7 (29 U.S.C. 157) of the National Labor Relations Act.

The Wisconsin Peace Act, Chapter 111, Laws of Wisconsin of 1939, which repealed Chapter 111, Laws of 1937, which was almost identical with the National Labor Relations Act, has added what is called a "right to refrain" from all the collective bargaining activities and other concerted action. Thus, Section 111.04 has added to the language of Section 7 of the National Labor Relations Act the following:

> "and such employees shall also have the right to refrain from any or all of such activities".

The essence of the Wisconsin Act is to establish and protect the right of the individual employee and the employer not to be interfered with in their desire to refrain from all collective bargaining and organizational activity and the usual concomitants of these activities. It is clear from the whole tenor of the Act that it was intended to check the progress of labor organizations and collective bargaining by preventing vigorous activity and persuasion by labor organizations, their leaders and their enthusiastic members in the effort to convince the unconvinced employees in their bargaining units of the advantages of collective labor activities. Hence, labor organizations, their leaders and their most active members, are the respondents in these proceedings rather than employers who are interfering with the progress of organizational activity, who are the respondents in proceedings under the National Act. Such a law whose purpose is to sanctify and protect the "right to refrain" from labor organization and to make acts of individuals—these individuals would necessarily be labor union officers and vigorous advocates of its benefits—its basic purpose is subversive of the purposes of the National Act. Unfair

labor practices of labor organizations, their officers and advocates is a contradiction in terms in the light of the basic theory of the National Labor Relations Act. While the states may under the police power interfere with the excessive exercise of rights under the National Labor Relations Act, while they may establish or guarantee liability for torts committed by means of the exercise of such rights, while they may make certain acts criminal offenses where necessary for the safety and peace of the community,

> *Milk Drivers Union vs. Meadowmoor,* 312 U.S. 275, 297, 85 L. Ed. 836, 61 Sup. C. 552,

the question arises whether they can make them unfair labor practices in a case properly under the National Labor Relations Act. To permit the states to do this frustrates the purpose of the National Labor Relations Act because employees cannot obtain the fullest enjoyment of their rights under that Act, whose basis is the encouragement and protection of labor organization, if in the struggle to obtain what the National Act guarantees them, they will commit inevitably the new so-called unfair labor practices created by the State Act. This case demonstrates just that.

It is undisputed that the Allis-Chalmers Manufacturing Company is as to a very large proportion of its business engaged in interstate commerce and that its employees are clearly within the terms of the National Labor Relations Act. Therefore, the industrial relations and the organizational activities of petitioners and of all the employees of the Allis-Chalmers are subject to the National Act.

The theory of the National Labor Relations Act is to induce industrial peace by encouraging and fostering collective bargaining. The Wisconsin Peace Pact is a

subtle attempt to secure industrial peace by retarding or preventing organization. Its basis is the doctrine that industrial peace can best be secured by individual bargaining. Hence, it establishes a "right" of refraining from obtaining or trying to obtain the benefits of the National Labor Relations Act, the infringement of which right it makes an unfair labor practice. Under this Act, given a board, created by this Act, imbued with this theory that the millenium will come from the restoration of individual bargaining and decisions such as that in the present case inevitably follow and the necessary findings to substantiate a preconceived theory readily result. Given further state courts imbued with this public policy of the state, and affirmances of such state board decisions quite as naturally follow. Thus, a considerable subversion of the National Act is accomplished and nothing but the decisions of this Court can preserve the rights of those many employees in states having these "Peace" Acts who are entitled to the benefits of the National Act.

While the findings of the Board emphasize threats of bodily harm, and, what is claimed to have been an assault upon Bohachef, which are set forth in what the Supreme Court (Opinion 13) describes as findings of evidentiary matters, the real substance of the matter is that the members of petitioner union refused to work with Bohachef because he would not restore himself to good standing in the union and they demanded that the company discharge Bohachef if he did not so restore himself. Petitioner union did not deny that it did make such demands especially as to Bohachef, whom it regarded as a disrupter, and, as to whom even the Board finds (R. 131, Finding 12) that he expressed forcefully his reasons for not desiring to affiliate with the union.

Closed Shop Provision of State Act Contrary to N. L. R. A.

It was the policy of petitioner union during all of its existence to endeavor to obtain an all union or closed shop agreemnt from the employer. And it carried on agitation and a campaign to this end and, finally, in January, 1941 called a strike, one of the demands of which was the closed shop and the discharge of those like Imp and Bohachef who refused to join the union and worked against it.

Under the National Labor Relations Act, petitioner union, which had been established as the sole bargaining representative of the industrial unit because it had established a majority of the employees which was never questioned, had the right to demand a closed shop by virtue of this majority. Under the Wisconsin Act (111.06 (c)) it could not make such demand unless three-fourths or more of the employees in the collective bargaining unit had voted affirmatively by secret ballot in a referendum conducted by the Board to make such demand. This is another instance where the State Act attempts to deprive employees of a right guaranteed by the National Act.

The State Board in its findings and conclusions proceeds upon the presumption that this demand for a closed shop was illegal because the prerequisites of the State Act had not been complied with. Of course, these employees had the right to quit their employment at any time and they had the right to do so for any reason including the reason that they did not wish to work with those who were not members of the union and opposed it and they had the right to quit their employment in concert. The Wisconsin Supreme Court held that Section 111.06(2)(e) does not forbid an employee to quit his employment singly or in concert with others.

Hotel Employees vs. Wisconsin Employment Relations Board, 236 Wis. 329, 342, 353.

Therefore, even under the Wisconsin Act, they had the right to jointly leave their employment and to threaten to do so. The demand that certain employees be discharged is nothing other than the threat that if they are not discharged those making the demand will quit their employment singly or in concert. In the latter case this would mean a strike for the closed shop as to the legality of which there can be no question today.

However, under the National Labor Relations Act a mere majority has the right to demand a contract for a closed shop. Since petitioner union unquestionably had a majority it had a right to demand a closed shop. The employer had a right, since this union and this bargaining unit were operating under the National Labor Relations Act, to grant such closed shop. It follows that the employer in a situation of this kind where the union under the terms of the Federal Statutes was entitled to demand a closed shop could discharge employees who were not members of the union. The employer agreed with this position of the union as appears from the letter written to the union (R. 126, Finding 5) in which it states that it will discharge two of the men in question and that it has asked them to resign.

The conclusion of the Board, sustained by the trial court (R. 139, 142 B) and by the Supreme Court of Wisconsin (Opinion 13(b) and 22 part "B"), that the petitioners cease and desist from attempting to induce the employer to discharge employees because they are not members of the union, is based upon Section 111.06 (2)(b) which makes it an unfair practice to coerce, intimidate or induce an employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in Section 111.04 which is

the Section which establishes the so-called right to refrain from labor activities. There is here a definite interpretation by the Supreme Court of Wisconsin of the Wisconsin Act that it is an unfair labor practice for the employer, in the absence of the closed shop contract, to discharge an employee because he will not join a union and such closed shop contract must comply with the Wisconsin Act, that is, it must have been demanded by a three-fourths vote of all the employees in the bargaining unit. There is here a direct and important conflict with the provisions of the National Act, and, by the decision of the Wisconsin Supreme Court and its interpretation of the Wisconsin Statute, petitioner union is denied the rights guaranteed by the National Act. It may not demand a closed shop, it may not carry on a campaign to obtain it, it may not induce the employer to grant it and it must publish to all the employees in the bargaining unit that it will cease to endeavor to induce the employer to employ only union men and to make a contract to this effect. It is submitted that this is a clear and definite denial by the state through its statute, the interpretation of which by its Supreme Court is conclusive on this Court, of a very important and fundamental right guaranteed by the National Labor Relations Act.

The National War Labor Board, on August 28, 1943, decided in the case of Local 260 International Fur and Leather Workers Union, C.I.O. vs. Greenebaum Tanning Co. that the union was entitled to a maintenance of membership clause in its contract in spite of the fact that it had not established its right under Section 111.06 (c) by having obtained a three-fourths vote in an election by secret ballot conducted by the Wisconsin Board. The decision is not yet published. In the opinion by Dean Wayne L. Morse, the following is quoted in the press:

"The Supreme Court made it clear that if a state act purports to work a forfeiture of the rights granted by

the national labor relations act, such portion of the state act is a nullity."

Organizational Activities Are Described in Terms of Coercion.

The acts which are found by the Board to constitute coercion and intimidation are really concerted activities and organizational efforts protected by National Labor Relations Act.

The findings of fact of the Board (R. 125) are largely general conclusions of law. Finding 6 (R. 127) recites that it is and has been the policy of appellants "to compel" all employees in the collective bargaining unit represented by them to become and remain members in good standing. The word "compel" like the other words used in the findings hereinafter referred to is a characterization reflecting the opinion of the Board. No specific facts are given which would afford the basis for the use of this conclusion of law.

Finding 7 (R. 128) recites that, in order to carry out such policy, and for the purpose of "coercing and intimidating" employees to cooperate with the union against the will of such employees, the union and its officers and many of its members carried on a course of "coercion and intimidation" against Imp and Bohachef to compel them to join the union and pay dues as a condition of retaining employment. Again, general terms showing the conclusion of the Board and phrased in language to bring it within the terms of the unfair labor practices in Section 111.06 are used. The language is still familiar from the days before modern labor legislation when it was commonly used to characterize conduct of labor organizations in exercising their tactics and using their weapons, especially picketing, in labor disputes. Thus, picketing when used by numbers was generally character-

ized as intimidation and coercion because of the numbers using it. Since that time we have come a long way to recognizing that the application of democratic methods and weapons by working men in their struggles to obtain economic justice are not in themselves coercion and intimidation.

Thus, what was characterized as "a militant purpose, inconsistent with peaceful persuasion" and what was called "a sinister name,"

American Foundries vs. Tri-City Council, 257 U.S. 184, 205, 207;

Traux vs. Corrigan, 257 U.S. 312, 340

has become "liberty of communication which is secured to every person"

Thornhill vs. Alabama, 310 U.S. 88.

So here, the same terms are used to lend ominous significance to what when analyzed was nothing other than the use of persuasion by members of a labor organization which was attempting to exercise its rights and cause non-members to join. It has been frequently said that the exercise of these rights by a large majority cannot be considered coercion and intimidation merely because of the weight of numbers.

It is clear that the essence of what is the basis for the Board's findings and order is nothing but the concerted activities for collective bargaining or other mutual aid or protection guaranteed to employees by Section 7 of the National Labor Relations Act. That torts may have been committed, if such is the fact, does not suffice to deprive the employee of these inestimably valuable rights given by this charter of labor's freedom. Surely, merely because there was an insignificant infringement of the rights of one individual, the whole right of using their powers of persuasion to build up their organiza-

tion, which was already the bargaining representative of this entire industrial unit; their whole right to endeavor to attain 100% membership by obtaining a closed shop, could not be taken away and their privileges under the National Act forfeited by the State Board.

It has frequently been held by the National Labor Relations Board that activities such as are made the subject of the findings here, when indulged by a labor union, are "concerted activities for the purpose of collective bargaining or other mutual aid or protection" as guaranteed by Section 7 of National Labor Relations Act and do not change the status of the employees engaging in them.

Thus, work stoppages to protest layoffs come within this class.

> *United Air Craft Mfg. Co.,* I N.L.R.B. 236, 248, 1 L.R.R.M. (Labor Relations Reference Manual), 87.

Efforts by stewards to have the employees of a department limit their work hours in protest against the employer's refusal to bargain with the union.

> *Harnischfeger Corp.,* 9 N.L.R.B. 676, 3 L.R.R.M. 316.

Shutting off power in a department to protest discharges.

> *Firestone & Rubber Co.,* 22 N.L.R.B. 57, 6 L.R.R.M. 223, 226.

Refusal to work except upon union conditions and sympathetic walkout by remaining employees in the department.

> *Washougal Woolen Mills,* 3 N.L.R.B. 18, 6 L.R.R.M. 279.

Taking up a collection by two non-union employees for a striking union employee of their department.

Berkshire Knitting Mills, 17 N.L.R.B., 259, 5 L.R. R.M. 305, 313.

Leading work stoppages to protest unfavorable changes and working conditions.

Armour & Co., 25 N.L.R.B. 105, 6 L.R.R.M. 526.

Cudahy Packing Co., 29 N.L.R.B. No. 133, 8 L.R. R.M. 10.

See also

Republic Steel Corp. vs. N.L.R.B., 107 F. (2d) 472, 479 Cert. den. 309 U.S. 684.

N.L.R.B. vs. Stackpole Carbon Co., 105 F. (2d) 167, 174, 176 cert. den. 308 U.S. 605.

If the National Labor Relations Board is right in holding such activity to be amongst the rights guaranteed by Section 7 then such acts as those in the findings in this case cannot be unfair labor practices under a state law. No cases contrary to the decisions of the National Labor Relations Board have been found.

So Far as the State Act Forfeits Rights Given by the Federal Act it is Invalid.

This Court, in sustaining the Wisconsin Labor Peace Act, in so far as it does not conflict with the National Labor Relations Act, said the following, in

Allen-Bradley, Local vs. Wisconsin Employment Relations Board, 315 U.S. 740, 750:

"Nor is the freedom to engage in such conduct shown to be so essential or intimately related to a realization of the guarantees of the federal Act that its denial is an impairment of the federal policy. If the order of the state Board affected the status of the employees, or if it caused a forfeiture of collective bargaining rights, a distinctly different question would arise. But since no such right is affected, we conclude that this case is not basically different from

> the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. * * * It has not been shown that any employee was deprived of rights protected or granted by the federal Act or that the status of any of them under the federal Act was impaired. * * * We rest our decision on the narrow grounds indicated."

The findings here that certain acts, which, as has been shown, are merely the exercise of the right of concerted activity as guaranteed in Section 7 of the Federal Act, are unfair labor practices and, the order based upon such findings are a denial and impairment of the federal policy. It is the policy of the federal Act (29 U.S.C. 151 last paragraph) to encourage the practice and procedure of collective bargaining and to protect the full freedom of association for the purpose of negotiating the terms and conditions of employment or other mutual aid or protection. This policy cannot be carried out if acts aimed at achieving this end are made unfair labor practices by the state Act and permitted to be prohibited. Thus here acts which were a part of the organizational activity of this labor organization, which were aimed at increasing its membership and if possible enabling it to include all of the employees within its unit, are made unfair labor practices by the interpretation of the state court. They are not such under the National Labor Relations Act, because they are of a kind which are protected as furthering the purpose of the National Act.

The reasoning of the Supreme Court of Wisconsin that there is no conflict of jurisdiction because the powers of the National Board are restricted by Section 10(a) of

the National Labor Relations Act to unfair labor practices affecting commerce and the matters comprised in the orders of the Board in no way affected commerce (Opinion of the Court 5) is totally oblivious of the doctrine laid down by this Court

National Labor Relations Bd. vs. Jones & Laughlin S. Corp., (1937) 301 U.S. 1, 57 St. Ct. 615, 81 L. Ed. 983, 108 A.L.R. 1352,

Labor Board vs. Fruehauf, 301 U.S. 49,

Associated Press vs. Labor Board, 301 U.S. 58,

that the constitutional basis of the National Labor Relations Act is that its provisions prevent industrial strife and thus remove impediments to interstate commerce. All labor relations in industries engaged in interstate commerce are related to that commerce.

Furthermore, the reasoning of the Court that, because the Federal Act does not contain a provision for the so-called "right to refrain" from collective activities, therefore, a provision in a state law giving such a right is not invalid, is unsound, because, as has been shown, this so-called right is contradictory to the guarantees contained in the Federal Act. The ruling by the court that the right to solicitation may be taken away as an infringement of this right to refrain where there is objection by the one being solicited is a transparent attempt to entirely prevent persuasion since it will always be easy to obtain evidence from the convinced opponents of labor organizations that they objected to being solicited and even the unprejudiced, timid workingman usually objects at first to being solicited. The further reason given by the Court that such solicitation hindered Bohachef in his right not to join the union guaranteed to him by the State Act clearly shows the conflict of that Act with the National Act; as does the statement of the Court that the demand for the discharge of the individual respondents rendered

the entire effort at organization unlawful because the employer could not discharge these employees in the absence of a closed shop contract obtained under the provisions of the Wisconsin Act by a three-fourths majority after secret vote.

The Constitutional Right of Free Speech is Infringed by the Judgment.

This effort here to conceal the denial of the right of free speech by means of clothing the findings in language of coercion and intimidation is the same as the language of the third count of the charge in

Thornhill vs. Ala., 310 U.S. 88, 92.

This Court said in

Milk Wagon Drivers Union vs. Meadowmoor Dairies, 312 U.S. 287:

> "Still it is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force."

And the Court said further (p. 299):

> "Here again, the state court have not the last say. They must act in subordination to the duty of this Court to enforce constitutional liberties even when denied through spurious findings of fact in a state court."

While this is not a picketing case, and, the state law here, under the interpretation of the Court, denies rights

guaranteed by the National Labor Relations Act, in addition, it is a case in which the rather trivial incidents of what is claimed to have been the use of force, all of which was denied by many witnesses as appears from the findings of the Board itself, has been used to deny the constitutional rights to free speech and persuasion to the union and all its members.

> "Such a ban of free communication is inconsistent with the guarantee of the freedom of speech."
>
> *A. F. L. vs. Swing,* 312 U.S. 321, 325.

It is submitted that the examination of the findings by this Court will readily indicate that they were made with the purpose of bolstering up trivialities to sustain the so-called right of refraining from those collective activities which are the public policy of the national government and of giving an apparent basis for the denial of constitutional rights in the effort to destroy collective bargaining and to restore the superseded condition of individual bargaining between employer and employee.

CONCLUSION

It is respectfully submitted that it has been shown that, under the interpretation of the Wisconsin Supreme Court, the Wisconsin Peace Act has been made the instrumentality of denying to workingmen a great part of the essential rights guaranteed by Section 7 of the National Labor Relations Act, and, of preventing the successful accomplishment of the objectives which are the policy of that Act by workingmen, and that constitutional rights have been denied to workingmen individually and to their organization established as the legal instrumentality of carrying on collective bargaining by the National Law and the National Labor Relations Board in an industrial unit which is admittedly the subject of

the national legislation. It is submitted, that, to sustain the beneficent provisions and the policy of the National Labor Relations Act, and, to prevent the denial of those essential constitutional rights which have become so important to workingmen, certiorari should be granted so that the judgment of the Supreme Court of Wisconsin may be reviewed.

Respectfully submitted,

A. W. RICHTER,
Attorney for Petitioners.

STATUTES OF WISCONSIN

111.02 *Definitions.* When used in this chapter:
(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, or receivers.

111.04 *Rights of Employes.* Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities.

111.06 *What Are Unfair Labor Practices.*
* * * *

(2) It shall be an unfair labor practice for an employe individually or in concert with others:

(a) To coerce or intimidate an employe in the enjoyment of his legal rights, including those guaranteed in Section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employe or his family.

(b) To coerce, intimidate or *induce* any employer to interfere with any of his employes in the enjoyment of their legal rights, including those guaranteed in Section 111.04, or to engage in any practice with regard to his employes which would constitute an unfair labor practice if undertaken by him on his own initiative.

* * * *

(3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employes, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by subsections (1) and (2) of this section.

(1) It shall be an unfair labor practice for an employer individually or in concert with others:

(c) To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; provided, that an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where three quarters or more of the employes in such collective bargaining unit shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. * * *

No. 353

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1948

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

v.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

BRIEF OF RESPONDENT, WISCONSIN EMPLOYMENT RELATIONS BOARD, OPPOSING GRANT OF WRIT OF CERTIORARI

JOHN E. MARTIN,
Attorney General,

JAMES WARD RECTOR,
Deputy Attorney General,

BEATRICE LAMPERT,
Assistant Attorney General,

Attorneys for Wisconsin Employment Relations Board.

Trade Press Publishing Company, Milwaukee, Wisconsin—10-2-48—50 copies

INDEX AND SYNOPSIS OF ARGUMENT

	Page
DECISION OF COURT BELOW	1
NATURE OF CASE	1
FACTS	2
ARGUMENT	4
I. QUESTIONS PRESENTED BY PETITIONERS NOT HERE INVOLVED	4
II. THE JUDGMENT HERE INVOLVED PRESENTS NO SUBSTANTIAL QUESTIONS WHICH HAVE NOT HERETOFORE BEEN PASSED UPON BY THE SUPREME COURT OF THE UNITED STATES	9
CONCLUSION	13

CASES CITED

Allen-Bradley Local 1111 v. Wisconsin E. R. Board, (1941) 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154 ..... 10, 12

American Colum & Lumber Co. v. U. S., (1921) 257 U. S. 377, 42 S. Ct. 114, 66 L. ed. 284, 21 A. L. R. 1093 12

Christoffel v. Wisconsin E. R. Board, (1943) 243 Wis. 332, 10 N. W. 2d 197 ..... 1, 2-3, 8-9, 12

Duplex Printing Press Co. v. Deering, (1921) 254 U. S. 443, 41 S. Ct. 172, 65 L. ed. 349 12

Gompers v. Bucks Stove & Range Co., (1911) 221 U. S. 418, 31 S. Ct. 492, 55 L. ed. 797 12

Hotel & R. E. I. Alliance v. Wis. E. R. Board, (1942) 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946 ..... 8, 10

Page

Milk, etc. Union, et al v. W. E. R. B., et al, (1942) 316 U. S. 668, 62 S. Ct. 1035 11

National Labor R. Board v. Electric Vacuum C. Co., (1942) 315 U. S. 685, 62 S. Ct. 846, 86 L. ed. 795 .....6, 7, 11

N. L. R. B. v. Indiana & Michigan Electric Co., et al, #73 (Jan. 18, 1943) 63 S. Ct. (Adv.) 394, 317 U. S. (No. 1) IV 5

National Labor Relations Bd. v. Jones & Laughlin S. Corp., (1937) 301 U. S. 1, 57 S. Ct. 615, 81 L. ed. 893, 108 A. L. R. 1352 6

N. L. R. B. v. Sterling Electric Motors, (C. C. A. 1940) 109 F. 2d 194, aff'd (1940) 114 F. 2d 738 5

N. L. R. B. v. Virginia Electric & Power Co., (1941) 314 U. S. 469, 62 S. Ct. 344, 86 L. ed. 306 10-11

Truax v. Corrigan, (1921) 257 U. S. 312, 66 L. ed. 254, 42 S. Ct. 124 12

Virginia Ry. Co. v. System Federation No. 40, (1937) 300 U. S. 515, 81 L. ed. 789, 57 S. Ct. 592 5-6

STATUTE INVOLVED

Federal Statutes

29 U. S. C., sec. 151 5

157 ..... 4, 5

Wisconsin Statutes

Ch. 111 4

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1943

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

v.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

BRIEF OF RESPONDENT, WISCONSIN EMPLOYMENT RELATIONS BOARD, OPPOSING GRANT OF WRIT OF CERTIORARI

DECISION OF COURT BELOW

The petition for writ of certiorari seeks review of a decision of the Supreme Court of the State of Wisconsin, 243 Wis. 332, 10 N. W. 2d 197, rendered June 16, 1943.

NATURE OF CASE

The decision affirmed a judgment of the Circuit Court for Milwaukee County confirming and enforcing an order of the Wisconsin Employment Relations Board. The board's order was based on findings that the petitioning union and its president had committed unfair labor prac-

tices under the Wisconsin Employment Peace Act in having:

(a) coerced and intimidated certain employees of the Allis-Chalmers Manufacturing Company in the enjoyment of their legal right to freely select collective bargaining representatives of their own choosing or to refrain from any or all concerted activities for the purpose of collective bargaining;

(b) attempted to induce the employer by the discharge or discipline of such employees to interfere with their right to select bargaining representatives free from interference.

The order, in effect, directed the discontinuance of such practices, and the posting of notices informing employees of the existence of the rights found to have been violated and of the intent of the union to refrain from interference with such rights by coercion or intimidation.

The exact provisions of the findings and order are set out in the decision of the Supreme Court of Wisconsin (10 N. W. 2d 201, 203, 243 Wis. 342-343, 347-348).

FACTS

The petitioners' brief contains a number of assertions purporting to be statements of facts which do not accord with the findings of the Wisconsin Employment Relations Board, but which represent rather the petitioners' contentions made at the time of hearing. For example, although the board affirmatively found that physical violence and threats of physical violence were exercised by the union upon certain employees to coerce them into payment of union dues, the petitioners' brief at page 19 refers to one of the matters so found as "what is claimed to have been an assault" and follows with the statement that "the real substance of the matter is * * *."

The decision of the Supreme Court of Wisconsin expressly held that:

> "Perusal of the record of the proceedings before the board shows that they" [the findings] "are all amply sustained. These findings are made conclusive by the act if sustained by credible and competent evidence."

Neither the petition for certiorari nor its supporting brief has assigned error in respect to the foregoing holding.

Furthermore, although findings of fact could not be set aside on the ground that there was no evidence to sustain them unless the entire record were available, the petitioners have not filed (as required by Rule 38, Paragraph 1) "a certified transcript of the record in the case" which was before the Supreme Court of Wisconsin when it made its ruling on the findings. The petitioners, as a matter of fact, have not even supplied this court with all of that portion of the record which was "printed for the use of the court below," as provided by Rule 38, Paragraph 7 relating to the printing of the record. Because of the omissions and inaccuracies in the same printed abridgment of the record as is now before this court, it was necessary to print for the use of the court below a supplement covering portions of the omitted evidence. That supplement is not included in the printed abridgment filed with the petition for certiorari.

While the respondent Wisconsin Employment Relations Board has no reluctance to meet the issue whether the findings are supported by evidence, that issue has not been raised by the petition for certiorari, and the record upon which the findings are based has not been filed. Under those circumstances, any statements of fact which conflict with the findings are irrelevant and must be disregarded.

The salient facts as found are: The union and its officers carried out a persistent and militant campaign to compel the respondents, Michael Bohachef and Nicholas Imp, to

join the union. These two employees, incidentally, expressed their personal preferences by joining a different labor organization (R. 153, 196; Abridg. 152, 158). The campaign of the union was characterized by such efforts at compulsion as threats of bodily harm, physical assault, threats of loss of jobs, and false accusation of criminal offenses. The campaign also included efforts to induce the employer to discharge or discipline these two employees, upon threat of a general strike. The culmination of the campaign was a bitter strike of far-reaching effect, in which the demand for discharge of these two employees was the chief issue.

During this campaign, the union and the employer had no closed-shop nor union-shop contract, nor does the record indicate that any demand or request for such a contract was made of the employer until some time *after* the demand for the discharge of Bohachef and Imp, and *after* all the other acts upon which the findings were based.

ARGUMENT

I. QUESTIONS PRESENTED BY PETITIONERS NOT HERE INVOLVED

None of the three questions defined on page 8 of the petitioners' brief is involved in this case.

(1) Neither does the Wisconsin Employment Peace Act (Ch. 111, Wis. Stats.) "create" a new right to abstain from all the concerted activities described in sec. 7 of the National Labor Relations Act (49 Stat. 452, c 372 § 7, 29 U. S. C., § 157), since that right, as well as the right to engage in such activities, existed independently of statute; nor is the right to *abstain* from concerted activities inconsistent with the right to *engage* in such activities. The petitioners seek to interpret sec. 7 of the National Labor Relations Act as if it created an *obligation* to

engage in concerted activity. It has not been so construed. This court has recognized that the National Labor Relations Act (49 Stat. 449, 29 U. S. C. § 151 *et seq.*) seeks to safeguard full freedom of choice on the part of the employee. Freedom to refrain from participation in labor activity has been recognized as inherent in full freedom of choice, regardless of whether words to that effect are expressed.

For example, this court said in *N. L. R. B. v. Indiana & Michigan Electric Co., et al.*, #73 (January 18, 1943) 63 S. Ct. (Adv.) 394, 400-401, 317 U. S. (No. 1) IV:

> "Their" [the union's] "proposition to the Company that it cause the men to join Local B-9 was a proposal to violate the National Labor Relations Act, whose purpose is to protect the workmen from employer pressure *and leave them free to choose for themselves whether*, and with whom, *they will associate.*" (Emphasis supplied.)

In *N. L. R. B. v. Sterling Electric Motors*, (C. C. A. 1940) 109 F. 2d 194, 202, affirmed, 1940, 114 F. (2d) 738, it was expressly stated that sec. 7 of the National Labor Relations Act protects not only the rights to associate with an existing union or to assist in organizing a new association, but also to refrain from joining, creating or assisting any labor organizations. The court said, in part:

> "* * * What we have described above regarding the result of 'normal relations and innocent communications' between employers and employees properly may lead the latter to choose to remain unorganized. * * *
>
> "Each of these three rights is of equal value and in administering the National Labor Relations Act is entitled to the protection of the board."

The court in the foregoing decision based its ruling on the analogy of the holdings of this court in *Virginia Ry.*

Co. v. System Federation No. 40, (1937) 300 U. S. 515, 557, 81 L. ed. 789, 57 S. Ct. 592, 604, and *National Labor Relations Bd. v. Jones & Laughlin S. Corp.,* (1937) 301 U. S. 1, 45, 57 S. Ct. 615, 81 L. ed. 893, 108 A. L. R. 1352. Those cases held that the obligation of the employer to deal with the chosen representative of the employees imposed also the obligation to deal with no other, thus protecting the employees' right to refrain from selection as well as to make a selection.

In the instant case, it is not the employees' right with respect to selection of a representative which is involved, since the right of the union to bargain for the employees was conceded and recognized. It is the right of the employee to decide freely whether he shall join the union. That right exists even though the status of the union as bargaining representative has been established, and even though there may be some question as to the revocability of its selection as such representative during a fixed period.

It was pointed out in *National Labor R. Board v. Electric Vacuum C. Co.,* (1942) 315 U. S. 685, 691, 62 S. Ct. 846, 849, 86 L. ed. 795, that:

> "Assuming that every old employee furnished a power of representation for collective bargaining not revocable during the year, it need not be inferred the employee also was bound thereby not to switch his union allegiance."

(2) The question whether the state may limit efforts of a labor organization to obtain a closed shop is not in issue here.

Nothing in the order of the board or the affirming judgment seeks to prevent, nor even relates to, a demand for a closed shop. The gist of the order is directed to preventing intimidation of individual employees and preventing attempts to induce the employer to coerce individual employees, *in the absence of a closed shop.* It has been found and is conceded that there was no closed shop

contract between the union and the employer in this case. Neither do the unfair labor practices involved arise either out of, or in connection with, a demand for a closed shop contract. No such demand was made by the union until well *after* the culmination of its campaign to compel the two employees, Imp and Bohachef, to join its ranks and *after* demands for their discharge or discipline had been made of the employer upon threat of strike.

Neither the board nor the courts of Wisconsin decided nor were requested to decide whether, under the circumstances, it would have been lawful for the union to demand a closed shop contract, as a result of which Imp and Bohachef, *as well as all other employees*, would have been given the choice of joining the union or forfeiting their employment. What the state courts would have decided had such a question been submitted cannot yet be known. Until that question is presented and decided by the state courts, it cannot be submitted for review.

The petitioners have apparently adopted the theory that the demand by a duly selected bargaining representative that an employer coerce specified employees into joining a union is indistinguishable from a demand for a union shop. That theory was squarely rejected by this court in *National Labor R. Board v. Electric Vacuum C. Co.*, (1942) 315 U. S. 685, 62 S. Ct. 846, 86 L. ed. 795; where the court defined the issue as:

> "The basic question for determination by this review is the right of the respondent employer * * * to cooperate with unions, representing an uncoerced majority of its employees, to secure new membership. The right is challenged because exercised *prior* to a closed shop agreement." (Emphasis supplied) (Loc. cit. 315 U. S. 687, 62 S. Ct. 847)

The right of an employer to assist a union to obtain or hold members, prior to the execution of a closed shop contract, was there unequivocally denied, even though the

union had unquestioned status as the exclusive bargaining representative of the majority. Such action by the employer would be an unfair labor practice under the National Labor Relations Act.

An act of an employer defined as an unfair labor practice by the National Labor Relations Act acquires no immunity because it is performed upon demand of, or under severe pressure by, a union.

(3) This case does not present the question, as stated in petitioners' brief, whether a state may prevent solicitation of membership in a labor organization.

There has been no attempt in this case, either by the state act or the order and judgment issued thereunder, to prevent solicitation of members by a labor union. Presumably, in wording the third "question" the petitioners have reference to the provision of the order in which the term "solicitation" is used. The judgment, however, does not direct the union to cease and desist from solicitation, but only from "attempting to *coerce* or *intimidate* any of the employes of the Allis Chalmers Mfg. Co. * * * by *continuous solicitation* of membership *if objected to*" (Emphasis supplied) (R. 56; Abridg. 142) or by other specific means. The judgment does not prevent any solicitation except such as, by its persistent or over-reaching nature, falls within the terms "coercion" or "intimidation."

As pointed out in *Hotel & R. E. I. Alliance v. Wis. E. R. Board*, (1942) 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946 the order under review is the order as it has been construed by the Supreme Court of Wisconsin.

The Wisconsin court has construed the portion of the order relating to solicitation of members as follows:

> "* * * As to (1) while no cases have held that the specific acts of continuous solicitations to join the union against objection is an unfair labor practice, the continuous and persistent solicitations of Boha-

chef harassed and hindered him in the enjoyment of his legal right not to join the union. It was done for the purpose of so harassing, annoying and persecuting him as to cause him eventually to join the union against his will rather than endure it. The board might rightly so infer from the evidence. Such solicitations tend to provoke breaches of peace by violence. They destroy the right of the persecuted employee to pursue his work in peace, and frustrate the declared purpose of the act to promote 'industrial peace,' sec. 111.04 (2) Stats., and peaceful relations between employees as well as between employer and employees." (Loc. cit. 10 N. W. (2d) 204, 243 Wis. 332)

II. THE JUDGMENT HERE INVOLVED PRESENTS NO SUBSTANTIAL QUESTIONS WHICH HAVE NOT HERETOFORE BEEN PASSED UPON BY THE SUPREME COURT OF THE UNITED STATES

The broadest possible statement of the issue upon the petition for certiorari is whether the judgment requiring the union to cease and desist from the following activities violates any right guaranteed by the constitution or any statute of the United States:

> "(1) A. Attempting to coerce or intimidate any of the employees of the Allis-Chalmers Manufacturing Company, including Michael Bohachef and Nicholas Imp, or either of them, either by continuous solicitation of membership if objected to, or by assaults, or by threats of bodily harm or of loss of their jobs, or by false accusations of the commission of criminal offenses, or by any other manner or in any other way, to enjoy or engage in, or refrain from, any or all of the following rights or activities: To freely select collective bargaining representatives of their own choosing, or to form, join or assist labor organizations,

or to engage in lawful, concerted activities for the purpose of collective bargaining or any other mutual aid or protection.

"(1) B. Attempting in any way or in any manner to coerce, intimidate or induce the Allis-Chalmers Manufacturing Company to interfere with the complainants, Bohachef and Imp, in the enjoyment, or exercise, of their said rights and activities above stated, or their right to refrain from any or all of such activities" (R. 56; Abridg. 142).

A. With respect to the first, the mere assertion that the right to *coerce* or *intimidate* employees by the means described is protected by the constitution or laws of the United States is so manifestly fallacious as to render argument superfluous.

In the cases of *Hotel & R. E. I. Alliance v. Wis. E. R. Board,* (1942) 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946, and *Allen-Bradley Local 1111 v. Wisconsin E. R. Board,* (1941) 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154, this court upheld the validity of orders restraining unions in much broader terms from what the petitioners describe as "organizational activities."

Organizational activities aimed at persuasion rather than intimidation are not forbidden by the order and judgment of which review is sought; neither are activities which involve only the exercise of the right of speech. The board's order was based on a course of conduct which overstepped legitimate bounds into the area of tort, including physical violence and false accusation of commission of criminal offenses. This court has held that the fact that vocal expression has been included in a coercive course of conduct does not render such conduct immune from regulation. The parts of the conduct which involve the use of speech need not be regarded in isolation. It is the "totality of the activities" which are to be considered. *N. L. R. B. v. Virginia Electric & Power Co.,*

(1941) 314 U. S. 469, 477, 62 S. Ct. 344, 348, 349, 86 L. ed. 306.

Obviously, no mere exercise of the right of speech, unaccompanied by overt act or threat, is forbidden by the order or judgment.

B. All that is prohibited by the second portion of the judgment is attempting to induce the employer to commit what would be an unfair labor practice not only under the Wisconsin, but under the federal law.

National Labor R. Board v. Electric Vacuum C. Co., (1942) 315 U. S. 685, 62 S. Ct. 846, 86 L. ed. 795.

The assertion, that state action which tends to prevent a practice condemned by Congress conflicts with the laws of the United States, demonstrates its own absurdity.

The union is not prejudiced nor denied any valuable right by compliance with this provision of the judgment. On the contrary, to violate the provision would be to its distinct disadvantage in the event the employer should yield. If the employer should discharge an employee for lack of union membership, at the union's request, the employer's action would constitute assistance to the union under the rule of *National Labor R. Board v. Electric Vacuum C. Co.*, (1942) 315 U. S. 685, 62 S. Ct. 846, 86 L. ed. 795, and would nullify any closed shop contract which it might subsequently enter with that union.

Concerted activities directed toward the accomplishment of an unlawful object are not protected under any guarantee of the constitution or laws of the United States. That principle was the one involved in *Milk, etc. Union et al v. W. E. R. B. et al.*, (1942) 316 U. S. 668, 62 S. Ct. 1035, in which this court denied certiorari.

The principle has been well established by decisions of this court, among them:

American Colum & Lumber Co. v. U. S., (1921) 257 U. S. 377, 42 S. Ct. 114, 66 L. ed. 284, 21 A. L. R. 1093;

Truax v. Corrigan, (1921) 257 U. S. 312, 66 L. ed. 254, 42 S. Ct. 124;

Duplex Printing Press Co. v. Deering, (1921) 254 U. S. 443, 41 S. Ct. 172, 65 L. ed. 349;

Gompers v. Bucks Stove & Range Co., (1911) 221 U. S. 418, 438-439, 31 S. Ct. 492, 55 L. ed. 797.

Under the ruling of this court in *Allen-Bradley Local 1111 v. Wisconsin E. R. Board,* (1941) 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154, the fact that the employer is engaged in interstate commerce gives rise to no repugnancy between the order of the Wisconsin Employment Relations Board and the National Labor Relations Act. Here, as there, it is undisputed that the National Labor Relations Board has not undertaken to exercise any jurisdiction it might have over the employer's operations. Here, as there, the judgment involves only employee and union activity which is not governed by the federal act.

The petitioners have assigned as error that the Supreme Court of Wisconsin held that "the acts in question in this case had no relation to interstate commerce." The court's words were that, "The matters comprised in the orders of the board in no way affected commerce." (10 N. W. 2d 199, 243 Wis. 339.) This was no doubt intended in the sense that compliance with the order and judgment would cast no burden upon interstate commerce. Even if it were to be conceded that the court did err in the scope of its statement, the error would be immaterial since the statement is not essential to the result reached. The parties were unquestionably Wisconsin residents, subject to the police power of the state. So long as the order and judgment issued under the

state's police power does not burden interstate commerce, is not otherwise repugnant to the constitution, and does not conflict with the laws of the United States or orders of the National Labor Relations Board issued thereunder, it is immaterial that one of the parties engages in interstate commerce.

CONCLUSION

The petitioners have discussed a number of so-called conflicts between the theory of the National Labor Relations Act and the Wisconsin Employment Peace Act, based upon their own evaluation of isolated terms of the Wisconsin Act. While such theoretical conflicts would not be reviewable even if they existed, since they are not involved in the order and judgment of which review is sought, such malignment of the good faith of the Wisconsin Legislature as appears in petitioners' brief should not go unanswered.

The Wisconsin Legislature has not sought to undermine, but rather to support, the national policies. Both the National Labor Relations Act and the Wisconsin Employment Peace Act are directed to the same purpose of preventing industrial conflict by preventing infringement upon employee freedom of choice in the labor movement. The Wisconsin Act differs from the Federal Act in scope but not in theory. The Wisconsin Legislature has not aimed to curtail any of the guarantees afforded by the Federal Act, but has extended *further* protection of employee freedom. The Wisconsin Act imposes upon the employer the same obligations with respect to collective bargaining as does the Federal Act, and restricts employer interference with concerted activities of employees in almost identical terms. In administration of the act no case can be cited in which the Wisconsin Board has failed to defer to rulings of the National Labor Relations Board when the latter has assumed jurisdiction.

The essence of the argument on which the petitioners seek review is that their activities would not be subject to restriction under the National Labor Relations Act because that act has no application to them. We submit that such circumstance raises no conflict when the activities prevented by the state statute are also contrary to the spirit of the federal law.

JOHN E. MARTIN,
Attorney General,

JAMES WARD RECTOR,
Deputy Attorney General,

BEATRICE LAMPERT,
Assistant Attorney General,

Attorneys for Wisconsin Employment Relations Board.

FILED
OCT 12 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

No. 353

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

BRIEF OF RESPONDENTS NICHOLAS IMP AND MICHAEL BOHACHEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI

ARTHUR T. SPENCE
WALTER H. BENDER

Attorneys for Nicholas Imp and Michael Bohachef

SYNOPSIS

Page

NATURE OF PROCEEDING AND DECISION BELOW 1

PETITIONERS' ALLEGED JURISDICTIONAL GROUNDS FOR REVIEW 3

CORRECTIONS TO PETITIONERS' "SUMMARY STATEMENT OF MATTERS INVOLVED" (Pet. Br. p. 2, et seq.) 5

ARGUMENT 6

I. Section 111.04, Wisconsin statutes, is not repugnant to section 7 or to any other portion of the National Labor Relations Act 6-10

II. Petitioners' contentions that the applicable provisions of the state Act have been so interpreted and applied in this case as to bring them into conflict with the national Act and the free speech guaranty of the federal constitution are frivolous and present no substantial federal question 10-11

a. The first paragraph of the judgment. Prohibition of attempts at coercion and intimidation of employes, including the individual respondents, respecting their rights under sec. 111.04, Wis. stats. 11-14

b. The second paragraph of the judgment. Prohibition of attempts to coerce, intimidate or induce the employer to interfere with the individual respondents in the exercise of their rights specified in the first paragraph of the judgment 14-17

CONCLUSION 17

(Italics appearing in this brief are ours.)

INDEX OF AUTHORITIES

Allen-Bradley Local vs. Wisconsin Employment Relations Board, et al, 315 U. S. 840, 62 S. Ct. 820, 86 L. ed. 1154, 1164-1165 ..... 9, 10, 16-17

Christoffel vs. Wisconsin Employment Relations Board, 10 N. W. 2d 197, 200 ..... 1, 2, 7, 11, 12

Hazel-Atlas Glass Co. vs. National Labor Relations Board (4th Cir.), 127 F. 2d 109, 113-114 15

Hotel and Restaurant Employes International Alliance vs. Wisconsin Employment Relations Board, et al, 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946 950 ..... 9, 14

International Steel and Iron Co. vs. National Surety Co., 297 U. S. 657, 56 S. Ct. 619, 80 L. ed. 961, 965 17

McGoldrick vs. Compagnie Generale Transatlantique, 309 U. S. 430, 60 S. Ct. 670, 84 L. ed. 849, 851 17

Magnolia Petroleum Co. vs. National Labor Relations Board (10th Cir.), 115 F. 2d 1007, 1012 ... 8

Milk Wagon Drivers vs. Meadowmoor Dairies, 312 U. S. 387, 61 S. Ct. 552, 85 L. ed. 836, 840, et seq. 14

National Labor Relations Board vs. Fansteel Metal Corp., 306 U. S. 240, 59 S. Ct. 490, 83 L. ed. 627, 634 15

National Labor Relations Board vs. Sterling Electric Motors (9th Cir.), 109 F. 2d 194, 202 (Opinion on rehearing 112 F. 2d 63; set aside on other grounds, 114 F. 2d 738; motion denied 311 U. S. 617, 61 S. Ct. 67, 85 L. ed. ...; certiorari dismissed 311 U. S. 733, 61 S. Ct. 69, 85 L. ed. 471.. 8

National Labor Relations Bd. vs. Superior Tanning Co., 117 F. 2d 881, 890; cert. denied, 313 U. S. 559, 61 S. Ct. 834, 85 L. ed. 1520 8

National Labor Relations Board vs. Jones & Laughlin S. Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. ed. 893, 916 15

Thornhill vs. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. ed. 1093, 1103 14

Tri-plex Shoe Co. vs. Cantor, 25 F. Supp. 996, 997.. 9

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1943

No. 353

HAROLD CHRISTOFFEL and ALLIS-CHALMERS WORKERS UNION, Local No. 248, UNITED AUTOMOBILE WORKERS OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Petitioners,

vs.

THE WISCONSIN EMPLOYMENT RELATIONS BOARD and NICHOLAS IMP and MICHAEL BOHACHEF,

Respondents.

BRIEF OF RESPONDENTS NICHOLAS IMP AND MICHAEL BOHACHEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI

NATURE OF PROCEEDING AND DECISION BELOW

This brief is filed in opposition to a petition of the above named petitioners for the issuance by this court of a writ of certiorari to review a decision of the Supreme Court of Wisconsin (243 Wis. 332; 10 N. W. 2d 197; Abridgment of Record, last 26 pages following Index), rendered June 16, 1943. This decision affirmed a decision of the circuit court of Milwaukee County, Wisconsin

(Abridgment, p. 137, et seq.), which sustained, confirmed and enforced a decision of the Wisconsin Employment Relations Board (Abridgment, p. 125, et seq.), which Board was established and functioned herein under the provisions of the Wisconsin Employment Peace Act, Chapter 111, Wisconsin statutes, hereinafter called the state Act.

The above individual respondents filed a complaint under said Act with said Board, charging the petitioners with certain acts of intimidation and coercion against them to compel them to join the petitioning union (contrary to sec. 111.06 (2) (a), Wis. stats.), and against Allis-Chalmers Manufacturing Company, hereinafter called the employer, to compel their discharge (contrary to sec. 111.06 (2) (b), Wis. stats.), and asked the issuance by the Board of an appropriate cease and desist order under the state Act against the petitioners. The complaint also charged a violation of sec. 111.06 (2) (e), Wis. stats. The Board found that this charge was not sustained and thereafter this charge dropped out of the case. (*Christoffel vs. Wisconsin Employment Relations Board*, 10 N. W. 2d 197, 199.)

A hearing on the merits was duly had, findings made by the Board sustaining the first two above charges and the petitioners were accordingly ordered to cease and desist from attempts at coercion or intimidation of the individual respondents and from attempting to coerce, intimidate or induce the employer to interfere with the rights of the individual respondents as employes. The order also contained the usual provisions as to posting of notices by the Union and as to notification of the Board of compliance with the order.

The petitioners commenced the action provided in the state Act in the Milwaukee County circuit court to review and set aside this order and the respondent Board cross-

complained, asking its enforcement. From a judgment entered affirming the order the petitioners appealed to the supreme court of Wisconsin, which affirmed the judgment. This decision of the latter court is now sought to be reviewed here on certiorari.

PETITIONERS' ALLEGED JURISDICTIONAL GROUNDS FOR REVIEW

Petitioners seek to bring the case to this court on the ground that it involves a justiciable controversy under sec. 237 (b) of the Act of Congress dated February 13, 1935 (28 U. S. C. A. 344 (b)), providing among other things that this court may review by certiorari the decision of the highest court of any state wherein there is drawn in question the validity of a statute of such state on the ground of its being repugnant to the Constitution or laws of the United States.

Petitioners assert as the reason for allowance of the writ that the foregoing decision of the supreme court of Wisconsin has decided a federal question in a way in conflict with an applicable federal statute and applicable decisions of this court. (Pet. Br. p. 8.)

The federal questions asserted by their brief to be presented by the foregoing decision may be synopsized as follows:

> 1. Whether Wisconsin may, by its Employment Peace Act, create a right to abstain from all of the concerted activities provided for by the National Labor Relations Act (hereinafter referred to as the national Act), and by interpretation of such right prevent the exercise of rights guaranteed in section 7 of the national Act.
>
> 2. Whether Wisconsin by its said state Act may prevent a duly authorized labor representative of

employes of an employer engaged in interstate commerce from obtaining a closed shop by demanding that the employer discharge employes who refuse to join such labor union.

3. Whether Wisconsin may prevent membership solicitation by members of such union because such solicitation encroaches upon a right granted by the state statute to refrain from collective labor activities. (Pet. Br. p. 8)

The position of the individual respondents is that the writ should not issue because it clearly appears that no substantial federal question is presented, and the objections raised are determined against petitioners by applicable decisions of this court.

Specifically as to the three foregoing alleged federal questions set forth by petitioners the individual respondents feel that such questions as stated present a misleading idea as to the *real* issues. These respondents' position as to petitioners' so-called "issues" may be stated in extremely condensed form as follows:

1. There is no conflict between the state and the national Act in the respect suggested. While sec. 111.04, Wisconsin Statutes, after using language practically identical with that of the national Act as to employes' right of association, adds the right of the individual employe "to refrain from any and all such activities" this language, as it reads and as interpreted and applied in the decision sought to be reviewed in no respect conflicts with anything in the national Act.

2. The order complained of, as interpreted by the supreme court of Wisconsin, merely forbade (1) attempts to intimidate and coerce the individual respondents and (2) attempts to intimidate and coerce the employer, including demands, *in the absence of*

any closed shop contract, that it discharge these respondents because they would not join the petitioning union. Such an order does not run counter to anything in the national Act.

3. Neither the order of the Board, the judgment of the circuit court nor the decision of the supreme court of Wisconsin forbade "solicitation" of the individual respondents to accept union membership. What was forbidden was "continuous solicitation if objected to." Read in the light of the evidence and findings, this was constant persistent solicitation over repeated objections in an atmosphere of intimidation and coercion.

It is therefore the position of these respondents not only that there is no substantial federal question involved, but also that each of the alleged federal questions set forth by petitioners is frivolous and devoid of merit.

CORRECTIONS TO PETITIONERS' "SUMMARY STATEMENT OF MATTERS INVOLVED."

(Pet. Br. p. 2, et seq.)

The "Summary Statement of Matters Involved" beginning on page 2 of the Petition for Writ of Certiorari, constitutes a fair statement of the case with one principal exception.

The evidence as to whether the complainants before the Labor Board, Imp and Bohachef, were still members of Local 248 at the time of the occurrences found by the Board, can hardly be said to be in dispute. The evidence is clear and unmistakable that except for a few weeks prior to November, 1940, they were members in good standing of another union, i.e., Local 66 of the Machinists Union, A. F. of L. As they had ceased paying dues to Local 248 in May of 1939 and joined the A. F. of

L. union in October or November, 1940, it is difficult to find any basis for a dispute on the proposition that they were not members of Local 248 at the times involved in the controversy. (Abridgment, p. 152, 158.)

Also, the reference by counsel to the incident of December 18, 1940, in which the complainants were accused of attempting to "run down and injure" one of the members of Local 248, is misleading. The Board described in its findings (Abridgment, p. 129) the true facts of this matter; and held the accusations of petitioners as to running down anyone to be false and without any substantial basis. (Abridgment, p. 132.)

ARGUMENT

Petitioners' brief attempts to present a basis for exercise by this court of its discretion to review the decision of the supreme court of Wisconsin by an argument which contains misstatements, omissions of vital matters and many wholly unwarranted inferences. In the interests of brevity, no attempt will be made to note and answer these in detail, but some of them will be referred to in the course of the argument.

Petitioners' brief (pp. 14-15) sets forth seven points in respect to which it is asserted that the state court erred. These alleged errors will be covered in the course of this argument. The sixth error alleged, referring to interstate commerce, can be disregarded, since it is apparent from a reading of the decision that it does not rest on any finding that interstate commerce was not involved or affected.

I. *Section 111.04, Wisconsin statutes, is not repugnant to section 7 or to any other portion of the National Labor Relations Act.*

Section 111.04, Wisconsin statutes, at which petitioners' attack is mainly levelled, reads as follows:

> "Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

As stated in the opinion of the supreme court of Wisconsin (*Christoffel vs. Wisconsin Employment Relations Board,* (Wis.) 10 N. W. 2d 197, 200) this section is practically identical in its wording with section 7 of the national Act (29 U. S. C. A. sec. 157), but adds at the end thereof the phrase "and such employes shall also have the right to refrain from any or all of such activities."

The major part of the petitioners' brief is based upon the entirely unwarranted assumption that these words create a conflict between this section of the state Act and section 7 of the national Act. That is equivalent to saying that the right to "refrain" from the specified activities exists under the state Act, but does not exist under the national Act.

Of course, nothing of this sort is true. The right to refrain from these activities is nowhere *denied* by the national Act. It is specifically stated to be a part of the national public policy in the Norris-La Guardia Act (29 U. S. C. A. sec. 102). There the Congress, after reciting that the employe did not possess equality of bargaining power with the employer, says:

> "wherefore, *though he should be free to decline to associate with his fellows,* it is necessary that he have full freedom of association, self-organization and designation of representatives," etc.

Repeatedly in petitioners' brief the statement appears in one form or another that the right to refrain expressed in this section of the state Act is repugnant to the right of organization expressed in the national Act. (Pet. Br. pp. 14, 16-19) The foregoing statement of policy in the Norris-La Guardia Act shows how unsound such a position is.

The national Act contemplates that the employe shall have this freedom of choice, although, unlike the Wisconsin Act, it is silent upon the subject. However, when the national Act assures to each employe the "*right* to self-organization, to * * * join * * * labor organizations, to bargain collectively * * * and to engage in concerted activities" there is of necessity implied in the very grant full freedom on the part of each such employee *to exercise such rights or not,* as he elects.

This was well stated by the circuit court of appeals (7th circuit) in a case in which certiorari was denied by this court.

> "Nor does the Act compel an employe to form, join or assist a labor union, and he may deal individually with the employer. National Labor Relations Board vs. Sterling Electric Motors, 9 Cir., 109 F. 2d 194, 202." (*National Labor Relations Bd. vs. Superior Tanning Co.*, 117 F. 2d 881, 890; cert. denied, 313 U. S. 559, 61 S. Ct. 834, 85 L. ed. 1520.)

Other federal decisions supporting this interpretation of the national Act include—

Magnolia Petroleum Co. vs. National Labor Relations Board (10th Cir.), 115 F. 2d 1007, 1012;

National Labor Relations Board vs. Sterling Electric Motors (9th Cir.), 109 F. 2d 194, 202 (Opinion on rehearing 112 F. 2d 63; set aside on other grounds, 114 F. 2d 738, motion denied 311 U. S. 617, 61 S. Ct. 67, 85 L. ed. . . .; certiorari dismissed 311 U. S. 722, 61 S. Ct. 69, 85 L. ed. 471.)

Tri-plex Shoe Co. vs. Cantor, 25 F. Supp. 996, 997.

Petitioners' brief (p. 16, et seq.) asserts that the inclusion by the state Act of a number of acts constituting unfair labor practices when committed by employes or third persons (sec. 111.06 (2) (a) to (j) and 110.06 (3)), a subject on which the national Act is silent, brings the two acts into conflict.

The situation is not one where the silence of Congress can be taken as an indication that the subject should remain free from legislative restrictions or impositions upon it by the several states. Instead, the field is one in which the state is vitally interested locally in the exercise of its police power. The right of Wisconsin to legislate in this very field has been expressly recognized by this court.

> *Hotel and Restaurant Employes' International Alliance vs. Wisconsin Employment Relations Board, et al.*, 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946, 950.
>
> *Allen-Bradley Local vs. Wisconsin Employment Relations Board, et al*, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154, 1164-1165.

This disposes of petitioners' argument that the state has no right to legislate in this portion of this field as to which the national Act is silent.

A bitter attack is made upon the whole state Act as "intended to check the progress of labor organizations and collective bargaining by preventing vigorous activity and persuasion by labor organizations" and as a "subtle attempt to secure industrial peace by retarding or preventing organization." (Pet. Br. pp. 17 and 19)

This is neither the time nor place for a detailed defense against any general attack upon the state Act. As this court has said, it will deal in any case only with the

specific provisions of this Act directly involved in the case before the court. (*Allen-Bradley Local vs. Wisconsin Employment Relations Board, et al, supra.*)

Suffice it to say that the Wisconsin Act represents an earnest attempt by the state, keeping within its legislative field, to contribute to the solution of the problems involved in labor and industrial unrest. The Act is expressly based upon the legislative finding that there are *three* interests involved in any serious labor dispute,—that of the employes, whether represented by a union or not, that of the employer and that of the public; that "these three interests are to a considerable extent interrelated"; and that "it is the policy of the state to protect and promote each with due regard to the situation and the rights of the others." (Sec. 111.01 (1), Wis. stats.) It is likewise recognized that the employe in his negotiations with his employer, whether conducted in association with other employes or not, should be free from "intimidation or coercion from *any* source." (Sec. 111.01 (3), Wis. stats.)

With such an objective it was both inevitable and vital that the state Act should contain guaranties assuring the employe the full and free exercise of these rights (Sec. 111.04, Wis. stats.) and protecting him as fully from interference therein by other employes (Sec. 111.06 (2), Wis. stats.) or third persons (Sec. 111.06 (3), Wis. stats.) on the one hand as it protects him from interference by the employer on the other. (Sec. 111.06 (1), Wis. stats.) Thus here, as throughout the state Act, there is an earnest effort fairly to balance rights, duties and obligations to the end that industrial peace may be achieved and maintained.

II. *Petitioners' contentions that the applicable provisions of the state Act have been so interpreted and applied in this case as to bring them into conflict with the*

national Act and the free speech guaranty of the federal constitution are frivolous and present no substantial federal question.

Disregarding the customary provisions for posting notices and for notifying the state Board of petitioners' obedience of its order, there are only two provisions of that order, as upheld by the state courts in the judgment herein which are before us. They are quoted by the state supreme court in the margin of its decision (*Christoffel vs. Wisconsin Employment Relations Board,* 10 N. W. 2d 197, 203) and are repeated here for convenience.

Petitioners are to "cease and desist from—

> (1) A. Attempting to coerce or intimidate any of the employees of the Allis-Chalmers Manufacturing Company, including Michael Bohachef and Nicholas Imp, or either of them, either by continuous solicitation of membership if objected to, or by assaults, or by threats of bodily harm or of loss of their jobs, or by false accusations of the commission of criminal offenses, or by any other manner or in any other way, to enjoy or engage in, or refrain from, any or all of the following rights or activities: To freely select collective bargaining representatives of their own choosing, or to form, join or assist labor organizations, or to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.
>
> (1) B. Attempting in any way or in any manner to coerce, intimidate or induce the Allis-Chalmers Manufacturing Company to interfere with the complainants, Bohachef and Imp, in the enjoyment, or exercise, of their said rights and activities above stated, or their right to refrain from any or all of such activities."

a. *The first paragraph of the judgment. Prohibition of attempts at coercion and intimidation of employes, including the individual respondents, respecting their rights under sec. 111.04, Wis. stats.*

In challenging this provision of the judgment, petitioners assert that labor unions, in endeavoring to "obtain the fullest enjoyment of their rights under that (national) Act * * * will commit inevitably the new so-called unfair labor practices created by the state Act," and add "This case demonstrates just that."

We agree that the evidence and findings in this case demonstrate how far petitioners will go to coerce and intimidate their fellow employes by acts of violence and coercion denounced as unfair labor practices by sec. 111.06 (2) of the state Act. But most assuredly the success of the great labor movement in Wisconsin neither justifies nor requires nor rests upon such conduct.

The findings of fact of the Board are not and in fact could not be challenged on this petition, particularly as they have been fully approved by the state court after a careful "perusal of the proceedings before the state board." (*Christoffel vs. Wisconsin Employment Relations Board,* 10 N. W. 2d 197, 202.) Hence the findings as to petitioners' course of intimidation and coercion stand as verities.

Nor is there any basis for claiming that the coercion and intimidation found consisted merely of what petitioners' brief denominates "trivial incidents." The evidence and findings show the existence and execution of a carefully planned campaign to intimidate and coerce the individual respondents to the end that they would either be forced to join the union or would forfeit their jobs through forced discharge by the employer.

This campaign of petitioners goes far beyond "solicitation" (Pet. Br. p. 8), "use of persuasion" and "insignificant infringement" of individual rights (Pet. Br. p. 24). It is unnecessary in this brief to discuss the cases cited at pages 25-26 of petitioners' brief to support their

contention. Taking these cases at petitioners' own evaluation of them, they are obviously distinguishable from the present situation where neither the object sought nor the means employed by the union was legitimate. The object here was either, by coercion and intimidation, to force union membership against the will of these employes or to compel their discharge by their employer *when there was no closed shop agreement in existence.* (Finding 4, Abridgment, p. 126) And the methods were the bald acts of intimidation and coercion described in detail in the findings. As the court will read the findings, these acts need not be elaborated here.

There is nothing in this judgment or in the state Act which provides, expressly or even inferentially, that the union "may not demand a closed shop, * * * may not carry on a campaign to obtain it, * * * may not (with certain limitations not involved here) induce the employer to grant it * * *." (Pet. Br. p. 22) All of these things the union may freely do under the state Act and under the judgment. But it may not, as a part of such campaign, coerce, intimidate, hound and persecute, as it did in their campaign in this case.

The assertion that this portion of the judgment infringes petitioners' constitutional right of free speech is equally untenable. There is no denial of the right of a union to *solicit* membership, as the petition charges (Pet. Br. p. 8). What the order forbids is coercion and intimidation by "continuous solicitation of membership if objected to." Reading this, as we must in the light of the background presented by this record and findings, it appears that these individual respondents had been hounded and pursued and subjected to an organized campaign of intimidation and persecution. In view of what had already occurred, the order might well have forbidden *all* further solicitation of these men who had

consistently refused to become union members. (*Milk Wagon Drivers vs. Meadowmoor Dairies,* 312 U. S. 387, 61 S. Ct. 552, 85 L. ed. 836, 840, et seq.) The carefully circumscribed language used in the order was amply justified. Freedom of speech under the constitution and the decisions of this court does not operate as a shield to those who indulge in a planned course of conduct of this type. (*Hotel and Restaurant Employes International Alliance vs. Wisconsin Employment Relations Board, et al,* 315 U. S. 437, 62 S. Ct. 706, 86 L. ed. 946, 950; *Thornhill vs. Alabama,* 310 U. S. 88, 60 S. Ct. 736, 84 L. ed. 1093, 1103; *Milk Wagon Drivers Union vs. Meadowmoor Dairies,* 312 U. S. 287, 61 S. Ct. 552, 85 L. ed. 836, et seq.)

The state supreme court, just as it did in its decision in the case of *Hotel and Restaurant Employes International Alliance vs. Wisconsin Employment Relations Board,* 236 Wis. 329, 352, 294 N. W. 632, 295 N. W. 634, in applying these provisions of the state Act to the situation before it, has carefully followed both the express mandate of the state statute that nothing in it "shall be so construed as to invade unlawfully the right to freedom of speech" (sec. 111.15, Wis. stats.) and the applicable decisions of this court defining that constitutional guaranty as it applies in the field of employment relations.

b. *The second paragraph of the judgment. Prohibition of attempts to coerce, intimidate or induce the employer to interfere with the individual respondents in the exercise of their rights specified in the first paragraph of the judgment.*

The provisions of the second paragraph of the judgment must be read and considered in connection with the first paragraph and in the light of the factual situation which made necessary and justified the provisions of that section.

There was no closed shop contract in effect between the employer and the petitioner union. (Finding 4, Abridgment p. 126) Despite this fact the union, as a part of its campaign to compel the individual respondents to join it against their will, repeatedly demanded of the employer that it discharge them on the ground that they were "disrupters." (Finding 10, Abridgment p. 131) Neither Nicholas Imp (Finding 11, Abridgment p. 131) nor Michael Bohachef (Finding 12, Abridgment pp. 131-132) had ever engaged in any disruptive activities.

The petitioners contend that this paragraph of the judgment illegally circumscribes them in their right and efforts to obtain a closed shop contract with the employer. (Pet. Br. p. 22)

The proposition involved may be baldly stated as follows:

If this employer on its own initiative and in the absence of a closed shop contract, had sought to compel these individual defendants to join a particular labor union by threats of discharge if they refused, it would, under both the national (29 U. S. C. A. sec. 158 (1) and (3)) and the state (sec. 111.06 (1) (a) and (c)) Acts, have been guilty of an unfair practice of the most flagrant sort. (*National Labor Relations Board vs. Jones and Laughlin S. Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. ed. 893, 916; *National Labor Relations Board vs. Fansteel Metal Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. ed. 627, 634. And see *Hazel-Atlas Glass Co. vs. National Labor Relations Board* (4th Cir.), 127 F. 2d 109, 113-114, where two rival unions were involved and the employer encouraged membership in one and discouraged membership in the other.) Yet petitioners here urge upon this court that it is perfectly legitimate for the union to demand and for the employer to grant the discharge of these men for this reason. It requires nothing beyond the mere statement to show that

an employer cannot do at the union's demand acts of this sort which it is expressly prohibited by law from doing on its own initiative.

If it would constitute an unfair labor practice for the employer, at the insistence of the union in the absence of a closed shop agreement, to threaten an employe with discharge in order to force him against his will to join such union, it is certainly within the province of a state by appropriate statutory provision and of a state court pursuant to such a statute to forbid such union activity.

Petitioners make a persistent effort to challenge in this case the legality of that portion of sec. 111.06 (1) (c), Wis. stats., specifying the conditions under which the making of an all union or closed shop agreement shall not be deemed interference with the employe's rights. (Pet. Br. p. 20, et seq.) They even go so far as to state that the state board and the court based their action on the absence of the three-fourths vote in favor of such an agreement specified in this portion of that statute as the prerequisite of such a contract. (Pet. Br. pp. 21-22.)

This effort of petitioners seeks to bring before this court an issue *never passed upon by the state board, the circuit court or the supreme court.* This provision of that statute was never before nor considered by any one of these tribunals in this action. Petitioners' brief nowhere cites any portion of the record showing that any such consideration was given this portion of this section. Nor can it be claimed that the decision below in any way *in effect* applies to or rests upon this provision of the state Act.

Under these circumstances, this court, pursuant to its settled practice, expressed with reference to this very state Act, will not consider the challenged provision in this proceeding. (*Allen-Bradley Local vs. Wisconsin Em-*

ployment Relations Board, et al, 315 U. S. 740, 62 S. Ct. 820, 86 L. ed. 1154, 1165.) This court has repeatedly applied this same limitation of its jurisdiction in cases in other than the labor relations field. As late illustrations, see—

McGoldrick vs. Compagnie Generale Transatlantique, 309 U. S. 430, 60 S. Ct. 670, 84 L. ed. 849, 851, and

International Steel and Iron Co. vs. National Surety Co., 297 U. S. 657, 56 S. Ct. 619, 80 L. ed. 961, 965.

CONCLUSION

These respondents urge that the petition for certiorari must be denied because it affirmatively appears—

1. That no substantial federal question is presented respecting either of petitioners' challenges, namely—

   a. The alleged repugnance of the specified state statutes as applied in this case to the provisions of the national labor Act; and

   b. The alleged impairment by such statutes as thus applied of the constitutional guaranty of freedom of speech.

2. The objections raised by petitioners to the state Act and its enforcement in this case are fully met and determined against petitioners by applicable decisions of this court.

Respectfully submitted,

ARTHUR T. SPENCE
WALTER H. BENDER

Attorneys for Nicholas Imp and Michael Bohachef